

REMARKS

Claims 1-21 are pending in the present application wherein claim 21 is new. Claims 1, 2, 4-8, 10, 14, and 16 were amended. Claims 19 and 20 stand allowed. Claims 3, 9, 11-13, 15, 17-20 are in their original form. Claims 10, 14, and 16 were re-written in independent form so as to make them allowable (as indicated by the Examiner in the Office Action). Claim 21 is new and presented herein for consideration. Reconsideration of the pending claims is respectfully requested.

35 U.S.C. 112, Second Paragraph Rejection

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 7 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase “the enclosing means”, as set forth in claims 7 and 8, lacks antecedent basis.

This rejection is respectfully traversed. Claims 7 and 8 have been amended to clarify and distinctly claim the subject matter in accordance with Examiner’s comments and, where necessary, to address Examiner’s concerns. With the modifications to Claims 7 and 8, Applicants submit that Claims 7 and 8 are in a state of allowance acknowledging that each claim has all of the limitations of amended Claim 1. Therefore, Applicants respectfully request reconsideration and withdrawal of the Examiner’s rejection based upon 35 U.S.C. § 112, second paragraph.

35 U.S.C. 102, Anticipation Rejection

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 4 and 6 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Varner (U.S. Patent No. 5,131,491). Varner shows a housing means 56, plunger means (lower portion of 31 adjacent 44).

This rejection is respectfully traversed. Such rejection under §102 for anticipation requires that the single reference teach each and every element or step of the rejected claim. *See, Atlas Powder v. E.I. DuPont*, 750 F.2d 1569, 224 USPQ 409 (Fed. Cir. 1984). A prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990).

The Examiner's rejection under §102 fails to meet this test. Specifically, the claims of the present invention as amended are directed toward a biasing member which is located substantially within a housing. The Varner '491 invention discloses a spring or biasing member which is external to a housing. Further, the claims and detailed description of Varner '491 require an extra component, namely a "control ring slidably mounted on said cylinder" (Varner '491, col. 15, lines 65-66) for successful operation of the Varner device. With the amendment of Claims 1, 4 and 6, Applicants submit that Claims 1, 3, 4 and 6 are in a state of allowance. Therefore, Applicants respectfully request that Examiner withdraw the rejection of claims 1, 3, 4 and 6 under 35 U.S.C. §102(b).

Claims 1, 3-5, 9, 11-13, 15, and 18 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Useldinger (U.S. Patent No. 4,040,627). Useldinger shows a housing means 16, 18, plunger means 25, and alignable apertures at 41.

This rejection is respectfully traversed. Every element within the cited reference is not found in claims 1, 3-5, 9, 11-13, 15, and 18. Useldinger '627 refers to element "25" as an "end opening" of the shaft and not a "plunger means" as mentioned by the Examiner. In contrast, the present invention does not mention, require, or claim "alignable apertures" as mentioned by the examiner or "axial extending openings" as described as 41 in Useldinger '627 (col.2, lines 67-68).

As currently amended, the Applicants' claims are directed toward a device wherein a rope passes from one end of the device to the other. The Useldinger '627 invention is directed toward a distinctly different device wherein the rope enters and exits the same end of the device.

Specifically, Useldinger '627 claims a device wherein "both ends [of a rope-like member are] extending out through the hub" (col. 4, lines 5-6). Amended claim 1 is directed to a device wherein the rope path extends "from one longitudinal end of the housing to the other end." Therefore, claim 1 recites a limitation not disclosed or taught by Useldinger '627. Claim 9 is directed toward a device which has a "first position" and a "second position" in which a rope is either respectively "gripped" or "released." Claim 9 therefore recites a limitation not disclosed or taught in Useldinger '627.

As to Claims 3-5, 11-13, 15 and 18, these depend from the independent claims discussed above and therefore the relative aforementioned arguments are incorporated herein. Applicants respectfully request that Examiner withdraw the rejection of claims 1, 3-5, 9, 11-13, 15 and 18 under 35 U.S.C. §102(b).

Claims 1-4, and 6-8 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Hunter (U.S. Patent No. 3,949,832). Hunter shows a housing means 30, plunger means 48, and means for substantially enclosing (42,54,60).

This rejection is respectfully traversed. Every element in the claims as amended are not disclosed or taught by the cited reference. Applicant asserts that said claims, as amended, include the limitation of a "biasing member." Hunter '832 makes no mention or disclosure of a "biasing member," such as a spring or other mechanism, which guides a rope into a constricted or tapered opening. As amended, Claim 1 includes limitations which are not disclosed or taught by Hunter '832. As Claims 2-4 and 6-8 depend from Claim 1, the relative aforementioned arguments are incorporated herein. Applicants respectfully request that Examiner withdraw the rejection of claims 1-4 and 6-8 under 35 U.S.C. §102(b).

35, U.S.C. 103(a) , Obviousness Rejection

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office Action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13 and 17 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Useldinger in view of Shand (U.S. Patent No. 3,335,469). Useldinger shows the claimed controller with the exception of the means for attaching a load/strap. Shand at 17 shows means for attaching a load/strap. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide Useldinger with a means as claimed to facilitate the attachment of a load/strap to his controller.

This rejection is respectfully traversed. As discussed below, the Examiner has failed to demonstrate that said claims are obvious pursuant to 35 U.S.C. §103(a).

A *prima facie* case of obviousness is established when the teachings of the prior art itself suggest the claimed subject matter to a person of ordinary skill in the art. *In re Bell*, 991 F.2d 781, 783, 26 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1993). A proper *prima facie* case of obviousness cannot be established by combining the teachings of the prior art absent some teaching, incentive, or suggestion supporting the combination. *In re Napier*, 55 F.3d 610, 613, 34 U.S.P.Q.2d 1782 (Fed. Cir. 1995); *In re Bond*, 910 F.2d 831, 834, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990). Moreover, the combination of elements from nonanalogous sources, in a manner that reconstructs the applicant's invention only with the benefit of hindsight, is insufficient to present a *prima facie* case of obviousness. There must be some reason, suggestion, or motivation found in the prior art whereby a person of ordinary skill in the field of the invention would make the combination. That knowledge cannot come from the applicant's invention itself. *In re Oetiker*, 977 F.2d 1443, 24 U.S.P.Q.2d 1443, 1446 (Fed. Cir. 1992).

Regarding Claims 13 and 17, the Examiner admits that Useldinger contains no mention or disclosure “of the means for attaching a load/strap.” In view of the Applicants’ previous arguments differentiating the Useldinger reference, Applicant asserts that Useldinger does not teach or suggest the Applicants’ claimed controller and, more importantly, contains no teaching or disclosure of the “plunger” or “means for attaching a load or mounting support” elements of the Applicant’s claimed device. In fact, combining the “D-ring 17” of Shand with the Useldinger device would result in an inoperative combination.

The Useldinger disclosure teaches an “exercising device” which is adjustable and includes “means mounting the hub in the body member for allowing relative rotation between the hub and shaft ...whereby turning of the hub the ball will move...” allowing the user to adjust the friction between the shaft and the rope (Useldinger, Col. 1, lines 15-45). Figures 2 and 4 of the Shand reference, which is directed to personal safety equipment, teach attachment of “D-Ring 17” as

being “pivotally” connected to the runner (Shand, Col. 3, lines 49-50) which is held in place by “lugs 24 and collars 26” on the D-Ring 17 (Shand, Col. 4, lines 17-36). As shown in Figure 2 of Shand, the ends of “D-Ring 17” clearly terminate within the interior body of runner 2. In view of the teachings of Useldinger and Shand, the combination of D-Ring 17, with the terminal ends of D-Ring 17 including “lugs 24 and collars 26” disposed within the “hub” of the Useldinger device, would prevent, and at the very least interfere, the required rotation “relative” between the hub and shaft of Useldinger thereby resulting in an inoperative combination. Clearly, there is no teaching, incentive or suggestion in either Useldinger or Shand supporting the combination proposed by the Examiner. Moreover, doing so would result in an inoperative combination.

As there is no teaching or suggestion in either Useldinger or Shand as to how said references could be combined to result in the combination set forth in Claims 13 and 17, Applicants respectfully request the Examiner to withdraw the rejection of Claims 13 and 17 under 35 U.S.C. §103(a).

Claims 10, 14, and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Pursuant to the Examiner’s objection, Claims 10, 14, and 16 have been rewritten in independent form and are now believed to be in a state of allowance. Applicants respectfully request that the Examiner withdraw the objection to Claims 10, 14, and 16 and allow Claims 10, 14, and 16 as currently amended.

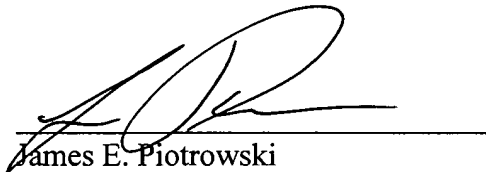
CONCLUSION

In light of the amendments and the arguments made by Applicants above, Applicants submit that all existing claims are now in condition for allowance. Applicants respectfully request that Examiner withdraw all rejections and objections with regard to the above-referenced claims in reliance on one or more of the grounds submitted by Applicants.

If there are any outstanding issues that the Examiner feels may be resolved by way of a telephone conference, the Examiner is cordially invited to contact James E. Piotrowski at (860) 527-9211.

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